

11-20-2017

State v. Clyne Respondent's Brief Dckt. 44953

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Clyne Respondent's Brief Dckt. 44953" (2017). *Not Reported*. 3939.
https://digitalcommons.law.uidaho.edu/not_reported/3939

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44953
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2016-4995
)	
HEATH THOMAS CLYNE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Clyne failed to establish that the district court abused its discretion by declining to retain jurisdiction upon imposing a unified sentence of 10 years, with one and one-half years fixed, for felony DUI?

Clyne Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Clyne pled guilty to felony DUI, and the district court imposed a unified sentence of 10 years, with one and one-half years fixed. (R., pp.112-16.) Clyne filed a notice of appeal timely from the judgment of conviction. (R., pp.117-19.)

Clyne asserts that the district court abused its discretion when it ordered his sentence into execution, instead of retaining jurisdiction, because the district court “did not recognize the full scope of what the period of jurisdiction would entail.” (Appellant’s brief, pp.4-6.) Clyne has failed to establish an abuse of discretion.

The decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The primary purpose of a district court retaining jurisdiction is to enable the court to obtain additional information regarding whether the defendant has sufficient rehabilitative potential and is suitable for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Probation is the ultimate goal of retained jurisdiction. Id. There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. Id.

Clyne is not an appropriate candidate for probation, particularly in light of his ongoing substance abuse, criminal offending, and willingness to endanger the community by driving while intoxicated. Clyne has an extensive record that includes four felony convictions (two for DUI) and 30 misdemeanors (two for DUI and six for driving without privileges). (PSI, pp.4-14.) Clyne has also been placed on retained jurisdiction twice in the past, with his last rider resulting in relinquishment. (PSI, p.14.) While incarcerated Clyne has received 15 DOR’s that include: intent to injure, rule order violation, disorderly conduct, simple battery, possession of tobacco, assault, failure to comply with disciplinary sanction, disobedience to orders, battery, harassment, and theft under \$25. (PSI, pp.14, 53-69.) Clyne did not do well on community supervision either, having committed multiple probation violations in the past and having been on parole

when he committed the instant offense. (PSI, pp.5-14.) It is evident that Clyne presents a grave risk to the community and is not a viable candidate for probation, given his blatant disregard for the law, the terms of supervised release, and the safety and well-being of others.

It is also plain that Clyne is not an appropriate candidate for probation in light of his failure to demonstrate any rehabilitative progress while in the community. Clyne reported that he has been in a “withdrawal management program” and has a history of attending “self-help group meetings.” (PSI, p.40.) Despite this, and despite the fact that he was on parole supervision and had been residing at the Rising Sun Sober Living recovery home for nine months, Clyne admitted he was sober for only seven months after being released from prison and, after that, his sobriety was “sporadic.” (PSI, pp.4, 16.) With respect to his mental health issues, Clyne reported that he was “diagnosed with anxiety in 2010, and Schizoaffective Disorder and depression in 2012” and that he received counseling services through Recovery 4 Life. (PSI, pp.20-21.) Clyne also reported that he participated in Moral Reasoning Therapy and “other similar classes.” (PSI, p.31.) Clearly, Clyne has failed to rehabilitate despite mental health and substance abuse treatment.

At sentencing Clyne asked for retained jurisdiction or a short period of fixed time. (3/14/17 Tr., p.77, Ls.9-12.) While the district court did not retain jurisdiction it did sentence Clyne to 10 years, with only one and one-half years fixed, and gave Clyne credit for 301 days served, leaving only approximately eight months of the fixed portion of the sentence left to serve. (3/14/17 Tr., p.81, L.23 – p.82. L.15.) The district court explained its reasons for imposing Clyne’s sentence, stating,

Your issues are you have some mental health problems and that those are eminently treatable when you take your meds. The question is how do we get you to take your meds. And that’s going to require, one, I think, some continued stability and a period of close supervision.

(3/14/17 Tr., p.80, L.24 – p.81, L.5.) The district court considered all of the relevant information and appropriately determined that Clyne was not a suitable candidate for probation, noting that protection of society was its primary concern in this case given the nature of the offense and Clyne’s criminal record. (3/14/17 Tr., p.79, L.22 – p.82, L.7.) The district court’s decision to not retain jurisdiction was appropriate in light of Clyne’s failure to stay on his medication, ongoing willingness to endanger others by driving while intoxicated, his failure to rehabilitate or be deterred despite numerous prior treatment opportunities and legal sanctions, and the risk he presents to society. Given any reasonable view of the facts, Clyne has failed to establish that the district court abused its discretion by declining to retain jurisdiction.

Conclusion

The state respectfully requests this Court to affirm Clyne’s conviction and sentence.

DATED this 20th day of November, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of November, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General